

IN THE  
**ARIZONA COURT OF APPEALS**  
DIVISION TWO

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RICKEY GOODWELL  
*Petitioner Employee,*

*v.*

THE INDUSTRIAL COMMISSION OF ARIZONA,  
*Respondent,*

ORACLE SANITATION,  
*Respondent Employer,*

COPPERPOINT MUTUAL INSURANCE COMPANY,  
*Respondent Insurer.*

No. 2 CA-IC 2016-0004  
Filed March 22, 2017

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THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND  
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.

NOT FOR PUBLICATION

*See* Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Civ. App. P. 28(a)(1), (f);  
Ariz. R. Spec. Act. 10(k).

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Special Action-Industrial Commission  
ICA Claim No. 93068289871  
Insurer No. 9307250  
LuAnn Haley, Administrative Law Judge

**AWARD AFFIRMED**

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COUNSEL

Rickey Goodwell, Oracle  
*In Propria Persona*

The Industrial Commission of Arizona, Phoenix  
By Jason M. Porter  
*Counsel for Respondent*

CopperPoint Mutual Insurance Company  
Mark A. Kendall, Associate General Counsel, Phoenix  
By Veronique Pardee, Tucson  
*Counsel for Respondents Employer and Insurer*

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**MEMORANDUM DECISION**

Judge Espinosa authored the decision of the Court, in which Presiding Judge Staring and Judge Miller concurred.

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ESPINOSA, Judge:

¶1 In this statutory special action, petitioner Rickey Goodwell contends the administrative law judge (ALJ) erred in declining to address his allegations of bad faith and unfair claim processing against respondent insurance carrier, CopperPoint Mutual Insurance Company (CopperPoint). For the following reasons, we affirm the award.

**Factual and Procedural Background**

¶2 We review the evidence in the light most favorable to upholding the ALJ's award. *Hackworth v. Indus. Comm'n.*, 229 Ariz. 339, ¶ 2, 275 P.3d 638, 640 (App. 2012). Pursuant to a 1994 settlement agreement, Goodwell received a \$1,250,000 third-party recovery award for an industrial injury sustained in February 1993. Under the terms of the agreement, CopperPoint was granted a

\$631,928.09 credit against all future disability compensation. Goodwell's claim has been reopened several times since 1994, and CopperPoint has taken credit for all temporary and permanent benefits awarded to Goodwell, including a 2010 permanent disability compensation award in excess of \$800 per month.

¶3 Goodwell filed a request for hearing in April 2016, asking the ALJ to investigate "non-payment of loss of earning capacity entitlement" pursuant to A.R.S. § 23-1061(J). At the hearing, Goodwell argued CopperPoint was unlawfully withholding his loss of earning capacity benefits, which he contended were not subject to its lien. He also alleged the withholding was in bad faith. CopperPoint responded that Goodwell's loss of earning capacity benefits qualified as disability compensation and were thus subject to the lien.

¶4 In June 2016, the ALJ issued a decision concluding that Goodwell's loss of earning capacity benefits were subject to CopperPoint's settlement credit, and denied his request for relief. Goodwell sought review, asserting he "was not given a determination on the allegations of unfair claim processing, bad faith in regards to medical benefits, supportive medical care, or on CopperPoint's misleading." The ALJ issued a decision upon review affirming its ruling. This petition for special action followed; we have jurisdiction pursuant to A.R.S. §§ 12-120.21(A)(2), 23-951(A), and Rule 10, Ariz. R. P. Spec. Act.

### **Bad Faith and Unfair Claim Processing**

¶5 On review, Goodwell argues the ALJ's decision and award in favor of CopperPoint is "erroneous" because it did not address CopperPoint's "behavior indicative of Bad Faith Unfair Claim practices," and contends "a hearing is mandated by rule to determine if bad faith exists."<sup>1</sup> CopperPoint responds that the ALJ

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<sup>1</sup>Goodwell does not challenge the ALJ's determination that his loss of earning capacity benefits are subject to CopperPoint's credit and we therefore do not address that issue.

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did not err in declining to address bad faith because Goodwell did not “file a complaint of bad faith and unfair claim[] processing practices” in accordance with R20-5-163, Ariz. Admin. Code. In reviewing an industrial commission award, we defer to the ALJ’s findings of fact, but independently review questions of law. *See Lane v. Indus. Comm’n*, 218 Ariz. 44, ¶ 9, 178 P.3d 516, 519 (App. 2008).

¶6 Section 23-930(A), A.R.S., provides that the Industrial Commission “shall investigate allegations of unfair claim processing or bad faith” upon receiving a complaint from a claimant. To allege such claims, the claimant must file a written and signed complaint “describ[ing] the specific actions of the . . . insurance carrier . . . alleged to constitute bad faith or unfair claim processing practices.” Ariz. Admin. Code. R20-5-163(C), (D). The entity named in the complaint must then file a written response within thirty days, R20-5-163(G), and “the Commission shall enter an award as it deems, in its discretion, appropriate,” R20-5-163(J).

¶7 As CopperPoint correctly observes, Goodwell did not submit a bad faith or unfair claim processing complaint pursuant to R20-5-163(C). Instead, he filed a request for hearing pursuant to § 23-1061(J), claiming his monthly “loss of earning capacity . . . entitlement” granted in 2010 was not subject to the “credit against ‘future disability compensation’” agreed upon in the 1994 settlement, and he therefore was “owed the . . . entitlement payments beginning from . . . 2010 . . . to the present . . . and all future payments.” His request for hearing made no mention of bad faith or unfair claim processing, and he did not raise the issue until the actual hearing had commenced. At that time, the ALJ declined to address Goodwell’s new assertion, explaining that his § 23-1061(J) request for investigation was “different from [a] bad faith” claim, which requires “a separate action.” *See* R20-5-163(C) (person alleging bad faith or unfair claim processing *shall* file a written complaint).

¶8 The record clearly reflects that Goodwell did not follow the required procedure for alleging a claim of bad faith or unfair claim processing. Accordingly, the ALJ did not err in declining to afford Goodwell a hearing on that issue.

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**Disposition**

¶9 The ALJ's award is affirmed.